

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

ALLANAH TUMURA BENTON,

Petitioner,

Civil No. 2:16-CV-13648

v.

HONORABLE DENISE PAGE HOOD

CHIEF UNITED STATES DISTRICT JUDGE

SHAWN BREWER,

Respondent.

**OPINION AND ORDER DIRECTING THE CLERK OF THE COURT TO
TRANSFER THE MOTION FOR A CERTIFICATE OF APPEALABILITY
TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH
CIRCUIT**

On June 29, 2018, this Court denied petitioner's application for a writ of habeas corpus, declined to issue a certificate of appealability and granted petitioner leave to appeal *in forma pauperis*. *Benton v. Brewer*, No. 2:16-CV-13648, 2018 WL 3207901 (E.D. Mich. June 29, 2018)

Petitioner has now filed a notice of appeal with the United States Court of Appeals for the Sixth Circuit. On the same day, petitioner filed a motion for a certificate of appealability. For the reasons that follow, the Court will further order that petitioner's motion for a certificate of appealability be transferred to the United States Court of Appeals for the

Sixth Circuit.

This Court notes that the proper procedure when a district court denies a certificate of appealability is for the habeas petitioner to file a motion for a certificate of appealability before the appellate court in the appeal from the judgment denying the petition for writ of habeas corpus or the motion to vacate sentence. See *Sims v. U.S.*, 244 F.3d 509 (6th Cir. 2001)(citing Fed. R.App. P. 22(b)(1)).

A district court has the discretion, pursuant to 28 U.S.C. § 1631, to transfer a case or pleading that has been improperly filed in that court, in the interests of justice, to the proper court. See *Roman v. Ashcroft*, 340 F.3d 314, 328 (6th Cir. 2003). The Court will therefore order that the Clerk of the Court to transfer petitioner's motion for a certificate of appealability [Dkt. # 13] to the United States Court of Appeals for the Sixth Circuit pursuant to 28 U.S.C. § 1631.

S/Denise Page Hood

Denise Page Hood

Chief Judge, United States District Court

Dated: August 30, 2018

I hereby certify that a copy of the foregoing document was served upon counsel of record on August 30, 2018, by electronic and/or ordinary mail.

S/LaShawn R. Saulsberry

Case Manager